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No. 83-1935

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In The
Supreme Court of the United States
October Term, 1983

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TONY AND SUSAN ALAMO FOUNDATION,
TONY ALAMO, SUSAN ALAMO, AND
LARRY LAROCHE,

Petitioners,

v.

RAYMOND J. DONOVAN, SECRETARY OF LABOR,

Respondent.

— o —
ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

— o —
PETITIONERS' REPLY BRIEF
— o —

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REPLY TO ARGUMENT OF RESPONDENT

The Petitioner will address herein three points raised by the Respondent in his Argument.

1. Respondent bases his argument upon various statements made by *former* associates of the Foundation. Such statements, however, are unreliable and were cor-

rectly recognized as such by the District Court, which declare that the "former associates had become disillusioned with the Foundation and Tony Alamo".¹ (Pet. App. 7.) The testimony of the *present* associates of the Foundation directly contradicted the statements of the former associates upon which the Respondent relies. Furthermore, various statements of former associates relied upon by the Respondent were questioned by the District Court as it found such statements to be "elicited in response to leading questions on depositions". (Pet. App. 9.) Thus, Respondent's reliance upon statements made by the former associates is seriously misplaced.

2. One of the salient issues in this case is whether the associates are employees as defined by the Fair Labor Standards Act. The Respondent's position on this issue is wholly based upon the District Court's finding that:

Although the associates expected no compensation in the form of ordinary wages, they did expect the Foundation to provide them food, shelter, clothing, transportation, and medical benefits. (Pet. App. 8.)

This finding has no support in the record and is clearly erroneous.

As agreed in a pre-trial order of the District Court, the Petitioners called three associates to testify concerning their relationship with the Foundation, with the understanding that their testimony would be representative of all the associates of the Foundation. The Respondent was given the opportunity to call any associate who would

¹ Nevertheless, even former associates were found to be "volunteers" at the time they were at the Foundation by the District Court.

testify differently from the three representative associates. The Respondent called no one to contradict the testimony of the Petitioners' representative associates. *Each such associate testified that he or she never expected any type of compensation.* (See, Pet. Brief, 12-21).

The Respondent argues that the associates *expected* compensation for their labor. Yet, when the associates were asked what their expectations were, their testimony was contrary to the position of the Respondent and was subsequently ignored by the District Court and is now bypassed by the Respondent in his argument. If expectation is a consideration, which both the Respondent and the Petitioners believe it is, then the associates' testimony about their expectations should not be ignored.

In an attempt to support his expectation argument, the Respondent states that the associates were totally dependent upon the Foundation. The record, however, does not support this position. In fact, the record contradicts such an argument. As stated by the representative associates, it was not uncommon for the associates to go outside the Foundation to secure jobs. As stated by Bill Levy:

Yes. A few of us would get together and possibly decide to go out and get a job. It may be planting trees or it may be—. I worked at Flanders Factory in Fort Smith, Arkansas. (Tr. Vol. II p. 78.)

As stated by another representative associate, Ann Elmore, during the early portion of her association with the Foundation, she stated: "I had some money from an investment that I lived off of, and I had a very small amount of child support." (Tr. Vol. II, p. 126.)

Consequently, the record does not support the argument or finding that the associates were totally dependent upon the Foundation for their existence.

Assuming, for the sake of argument only, that the District Court was correct in finding that the associates expected food, shelter, clothing, transportation, and medical benefits, the decision of the Court of Appeals for the Eighth Circuit in this case creates a conflict between it and the Court of Appeals for the First Circuit as set forth in *Turner v. Unification Church*, 473 F. Supp. 367 (D. R. I. 1978), *aff'd.*, 602 F. 2d 458 (1st Cir. 1979). The *Turner* decision was based upon a finding that Turner "received no monetary compensation, but was provided with food and shelter". (Id. 473 F.Supp. at 371). Despite this finding, the District Court, which was affirmed by the First Circuit, concluded that Turner was not an employee under the Fair Labor Standards Act.

3. The Respondent, in an attempt to persuade this Court to deny the Petition for Writ of Certiorari, states:

Should Petitioners be dissatisfied with the ultimate determination of the back wages issue, they can seek appellant review at that time, and the questions presented here would still be available for review by this Court. (Resp. Brief, p. 6.)

It is obvious from this appeal that the issues in dispute primarily concern the lower court's finding that the associates are "employees", and that the application of the Fair Labors Standards Act is not violative of the

Free Exercise or Establishment Clause of the First Amendment to the United States Constitution.²

This is the first time during the appellate procedure of this action that any statement has been made or position asserted wherein it is said that the decisions involved are merely "interlocutory" and not final. In fact, the Secretary filed his own appeal from the District Court. The issue as to whether the associates are employees or volunteers issues involving serious constitutional questions are ripe for review by this Court. On these issues, we are not "awaiting the completion of proceedings" as asserted by the Respondent.

CONCLUSION

WHEREFORE, petitioner prays that a Writ of Certiorari issue from this Honorable Court to review the decision of the United States Court of Appeals for the Eighth Circuit in Raymond J. Donovan, Secretary of Labor, United States Department of Labor v. Tony and Susan Alamo Foundation, Tony Alamo, Susan Alamo, and Larry LaRouche. In the event that the Petition is

² The Respondent in footnote 8 of its Brief in Opposition contends that Petitioners have pointed to no flaw in the analysis of the constitutional issues below. Petitioners deny this contention and refer this Court to pages i, 25, and 26 of the Petition for Writ of Certiorari filed herein.

granted, Petitioners pray that the decision of the Court below be reversed.

Respectfully submitted

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